

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

NOTICE OF APPEAL FROM THE EXAMINER
TO THE BOARD OF APPEALS

DAF

Applicant(s): Müller et al.

Serial No.: 10/601,325

Filed: 20 June 2003

For: HOLDING CLIP FOR FIXING THE POSITION OF GETTERS

Examiner: James R. Brittain

Art Unit: 3677

Confirmation No.: 9677

Customer No.: 27623 Attorney Docket: 608.0023USU



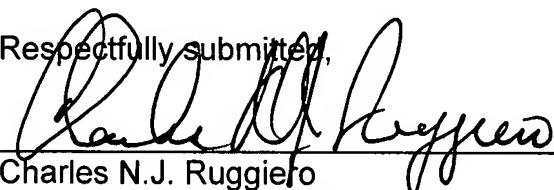
Mail Stop Appeal Brief-Patents
COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

We are enclosing for filing in the above-identified application the following:

1. Appellant's Request for Rehearing of Decision by the Board of Appeals and Interferences;
2. Transmittal letter in duplicate; and
3. Postcard.

Please charge any additional fees or credit any such fees, if necessary to Deposit Account No. 01-0467 in the name of Ohlandt, Greeley, Ruggiero & Perle. A duplicate copy of this sheet is attached.

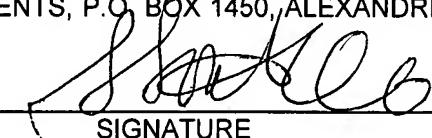
Respectfully submitted,


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CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE U.S. POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: MAIL STOP APPEAL BRIEF-PATENTS, COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450, ON AUGUST 27, 2007.

Suzanne Lombardo
NAME


SIGNATURE

8/27/07
DATE



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Confirmation No.: 6977
Customer No.: 27,623

Attorney Docket No.: 608.0023USU

**Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

REQUEST FOR REHEARING OF APPEAL DECISION

Dear Sir:

In response to the Decision on the Appeal (the "Decision") in the above matter dated June 26, 2007, the Appellants hereby request rehearing under §41.50(b)(2) and §41.52(a)(1) of the new ground of rejection set forth in the Decision.

Status of the Claims

Claims 1-7 and 9-13 are pending in the present application and are the subject of this Request for Rehearing. Claims 9 and 10 have been withdrawn from consideration but remain pending for rejoinder upon allowance of generic claim 1.

Claims 1-7 and 11-13 were rejected by the Board of Appeals in the Decision under 35 U.S.C. §103(a) over U.S. Patent No. 2,575,835 to Pohle (Pohle) in view of newly cited U.S. Patent No. 5,722,124 to Wisniewski (Wisniewski).

Grounds of rejection to be reviewed on this Request for Rehearing

The issue presented for review is the propriety of the Decision's new ground of rejection of claims 1-7 and 11-13 under 35 U.S.C. §103(a) over Pohle in view of Wisniewski.

Support for Appellants' Rehearing Request

In support of this Request for Rehearing, Appellants submit that the Decision included a new ground of rejection that misapprehended the plain language of the claimed invention.

Further, Appellants submit that the Decision overlooked that its proposed combination of Pohle and Wisniewski renders Pohle unsuitable for its intended purpose.

Accordingly, Rehearing of the Decision in the instant appeal under §41.50(b)(2) and §41.52(a)(1) is respectfully requested.

Arguments

Claims 1-7 and 11-13 stand or fall together.

Claims 2-7 and 11-13, as well as withdrawn claims 9 and 10, depend from independent claim 1.

Appellants respectfully traverse the rejection of claims 1-7 and 11-13 over Pohle in view of Wisniewski.

The Decision asserts that Appellants' only challenge to Pohle is that it "discloses a gettering loop 19 secured to the other end finger 26 in any suitable manner as for instance welding. Alternately, gettering loop 19 is secured to the skirt portion 25."

Appellants respectfully submit that this prior challenge to Pohle was not made as the only challenge to Pohle, but rather was made as the only challenge necessary to overcome the combination of Pohle with Misono. A challenge that the Board agreed with in the Decision.

Further, the Decision then concludes that this only difference in Pohle is overcome by the teachings of Wisniewski.

Appellants respectfully disagree.

Independent claim 1 recites, in part, that "said flexurally rigid connection and said first and second sections are elastically deformable to brace the getter in said first section and said second section in said inner surface (emphasis added)".

Thus, independent claim 1 requires that the elastic deformation of all three components is necessary to perform each of the two separate bracing functions recited.

In other words, the plain language of independent claim 1 requires that the flexurally rigid connection, the first section, and the second section are elastically deformable to brace the getter in the first section. Furthermore, the plain language of independent claim 1 requires that the flexurally rigid connection, the first section, and the second section are elastically deformable to brace the second section in the inner surface.

Appellants respectfully submit that the rejection of claim 1 set forth in the Decision misapprehended this plain language of the claimed invention.

(i.) Proposed combination fails to suggest all elements of claim 1

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

Appellants submit that the proposed combination of Pohle and Wisniewski simply fails to disclose or suggest the elastic deformation of all three components in order to perform each of the two separate bracing functions as claimed.

The Decision acknowledges that Pohle does not fairly suggest one of the two bracing functions, namely does not disclose or suggest “bracing” the getter in the clip.

Rather, the Decision asserts that elastically deformable portions of a clip that a hold another member in place were known as evidenced by Wisniewski.

Wisniewski discloses a fastener clip assembly 10 (FIG. 1) that is configured to secure together a first material 74 to a second material 76 (FIG. 6). In a first installation step, the engaging members 26, 28, 30, 32 of the fastener clip 10 are inserted through the central opening 90. As the reverse angled upper portions come into contact with the sides of the opening 90, they resiliently compress inwardly the engaging members until the outward bends, illustrated in the example by the bend between legs 42 and 44 in the engaging member 26, clears the opening 90. At this point, the sides of the central opening 90 seat around the intermediate portions of the engaging members such that the intermediate portions prevent either axial movement or rotation (spinning) of the fastener clip. See col. 5, lines 46-52.

In a second installation step, the engaging portion 84 with engaging member 86 having sloped means 88 is pressed through the aperture 22 in the base member 12 and causes the inwardly angled and radial portions 24 surrounding the aperture 22 to partially deflect and collapse in an inward fashion until the lower sloped portions 88 of the engaging member clears the portions 24. Id. at lines 53-63.

Thus, the fastener clip assembly 10 of Wisniewski discloses engaging members 26, 28, 30, 32 that connect the clip assembly to the second material 76 and radial portions 24 that connect the clip assembly to the first material 74.

In other words, Wisniewski discloses one part (engaging member) that secures the clip assembly in the second material and a different part (radial portion 24) that secures the clip assembly to the first material.

However, there is simply no requirement, teaching, or suggestion in Wisniewski that the two different parts (engaging members and radial portions) work together to perform the two different bracing functions.

Rather, Appellants submit that the elastic deformation of the radial portions 24, which deflect and collapse in an inward fashion, play no part in the connection of the engaging members 26, 28, 30, 32 in hole 90 of the second material 76.

Similarly, Appellants submit that the elastic deformation of the engaging members 26, 28, 30, 32, which resiliently compress inwardly, play no part in the connection of the first material 74 to the radial portions 24.

Accordingly, Appellants submit that even if one were to modify the device of Pohle in the manner suggested by the Decision, namely to include the radial portions of Wisniewski, the simple combination of claim 1 is not disclosed or suggested. As such, the proposed combination of Pohle and Wisniewski simply does not disclose or suggest claim 1.

(ii.) Proposed combination renders Pohle unsuitable for its intended purpose

Modification that renders apparatus unsuitable for its intended purpose cannot be said to have been obvious to one of ordinary skill in the art. See Ex parte Rosenfeld, 130 USPQ 113, 115 (Bd. App. 1961).

Pohle is directed to securing a gettering loop and requires that the gettering loop 19 be secured to the outer end of finger 26 so that the loop is positioned at the side of the aperture 23 so as to not interfere with the electron beam. See col. 2, lines 25-31.

Wisniewski discloses that radial portions 24 are used to secure the engaging portion 84 of the first material 74 by pressing the first member through the aperture 22. See col. 5, lines 46-63.

Appellants submit that if one were to attempt to secure the gettering loop of Pohle using the radial portions of Wisniewski, then portions of the gettering loop would be positioned on each side of aperture 23 and, thus, would interfere with the electron beam, rendering Pohle unsuitable for its intended purpose.

Accordingly, Appellants submit that the simple combination of claim 1 is not disclosed or suggested by the proposed combination of Pohle and Wisniewski.

(iii.) Conclusion

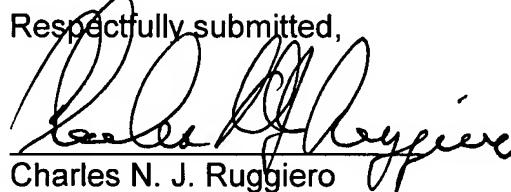
Accordingly, it is respectfully submitted that the proposed combination of Pohle and Wisniewski does not disclose or suggest independent claim 1. It is further submitted that the proposed combination of Pohle and Wisniewski does not disclose or suggest claims 2-7 or 11-13 for at least the reason that they depend from the aforementioned claim 1.

Appellants therefore respectfully request that the Board of Appeals reverse its Decision rejecting claims 1-7 and 11-13.

Summary

Appellants respectfully request that the Board of Appeals reverse the rejection of claims 1-7 and 11-13, and rejoin withdrawn claims 9 and 10, thereby enabling all of the pending claims to issue.

Respectfully submitted,


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